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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,428	09/05/2003	John F. Poccia III	J&J 5072 US NP	7571

27777 7590 10/06/2005

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EXAMINER	
CHAPMAN, GINGER T	
ART UNIT	**PAPER NUMBER**
3761	

DATE MAILED: 10/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/656,428	POCCIA ET AL.	
	Examiner	Art Unit	
	Ginger T. Chapman	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-18* is/are pending in the application.

4a) Of the above claim(s) *11,12 and 14-18* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-10 and 13* is/are rejected.

7)☒ Claim(s) _____ is/are objected to.

8)☒ Claim(s) *1-18* are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *16 May 2005*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-13, drawn to absorbent articles, classified in class 604, subclasses 358, 377 and classified in class 602, subclass 52.

II. Claims 14-18, drawn to a method of making an absorbent composite laminate, classified in class 604, subclasses 377, 383.

The inventions are distinct, each from the other because of the following reasons:

Inventions Group I and Group II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the products may be made by thermal point bonding.

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

If Applicants elect Group I, then an election of species is required:

This application contains claims directed to the following patentably distinct species of the claimed invention:

1. Species 1: diaper;

2. Species 2: sanitary pad;

3. Species 3: adhesive bandage.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

During a telephone conversation with Mr. Kent Wissing on 30 September 2005 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-13; species 3 adhesive bandage. Affirmation of this election must be made by applicant in replying

to this Office action. Claims 11, 12 and 14-18 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Objections

Claim 2 is objected to because of the following informalities: claim 2, line 1 "the fibers" lack antecedent basis. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 4, 6, 9, 10 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Pike et al (US 6,352,948).

Claim 1. As seen in Figure 1, Pike et al disclose an absorbent article (10) comprising: a absorbent nonwoven fabric (12) having a density from about 0.01 g/cc to about 0.05 g/cc (col. 6, ll. 27-39), said nonwoven fabric having a first major surface and a second major surface (fig. 1);

and an apertured film (14) secured to at least one major surface (16) (col. 9, l. 15) of the nonwoven fabric (12).

Claim 3. Pike et al disclose fibers comprising the nonwoven fabric (12) are bicomponent fibers (col. 6, l. 63 and col. 3, ll. 41-42).

Claim 4. Pike et al disclose the nonwoven fabric (12) comprises a blend (col. 4, l. 9) of from about 70% to about 95% by weight of synthetic non-absorbent fibers and from about 5% to about 30% by weight of absorbent fibers (col. 3, ll. 56-58) and has a basis weight ranging from about 30 gsm to about 150 gsm (col. 6, ll. 38-39).

6. Pike et al disclose the article (10) is a wound contacting pad for an adhesive bandage (col. 5, l. 38).

9. In Figure 2 Pike et al disclose a top layer (24) secured to the second major surface (col. 9, ll. 43) of said nonwoven fabric (22).

10. Pike et al disclose the top layer (14) material is a microporous film (col. 8, l. 65).

13. Pike et al disclose the article (10) is an adhesive bandage (col. 5, l. 38).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pike in view of Utz (EP 0,403,187 A1).

Claim 2. Pike discloses the nonwoven but does not expressly disclose fibers comprising the nonwoven selected from the group consisting of rayon, cotton, wood pulp, and combinations thereof. Utz teaches fibers selected from the group consisting of rayon (col. 2, l. 27). Utz, at column 2, lines 5-7 expresses the desire and clear motivation for a nonwoven fibrous layer consisting of a material that can be bonded to the film. In view of the teachings of Utz, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the nonwoven fabric of Pike et al consisting of rayon as taught by Utz, since Utz states at column 1, lines 4-5 that using such a nonwoven for film bonding produces a surface material especially useful for protective dressings.

Claims 5, and 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pike in view of Radel et al (4,342,314).

Claim 5. Pike et al disclose the apertured film but does not expressly disclose a polymeric material selected from the group consisting of ethylene methyl acrylate, polyethylene,

metallocene catalyzed polyethylene, polypropylene, and copolymers thereof, and ethylene vinyl acetate copolymers. Radel et al, at column 1, lines 17-27 expresses the desire to provide an apertured film which promotes liquid transport. In figure 4, Radel et al teach the apertured film (20) comprising polyethylene (col. 8, ll. 54-55). In view of the teachings of Radel et al, to form the apertured film of Pike of polyethylene as taught by Radel et al would have been obvious to one having ordinary skill in the art at the time the invention was made since Radel et al teach at column 12, ll. 54-62 that the apertured film combines the desirable fluid transport and anti-rewet properties with the air permeability and fiber-like feel of nonwoven fibrous webs in a single resilient fluid pervious polymeric web.

Claims 7 and 8. Radel et al teach the open area of the apertured film ranges from about 5 percent to about 30 percent and from about 10 percent to about 25 percent of the total area of the apertured film (col. 8, ll. 62-63).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Sun et al (US 6,600,085) discloses, in Figures 2-6 and claims 1-3, 5, 8, 11-12 and 20, an absorbent article comprising a nonwoven fabric (24), an apertured film (28) and a microporous top layer (32) wherein the article is an adhesive bandage (50).

Although this reference is pertinent prior art, it was not used to reject any claims in the first office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ginger T. Chapman whose telephone number is (571) 272-4934. The examiner can normally be reached on Monday through Friday 8:30 a.m. to 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ginger Chapman
Examiner, Art Unit 3761
9/30/05

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TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER